

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

|   |                          |   |                            |
|---|--------------------------|---|----------------------------|
| <b>PRE-APPEAL BRIEF REQUEST FOR REVIEW</b>  |                          | Docket Number (Optional)<br>1004350.119US (4819-4735) |                            |
| I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)] |                          | Application Number<br>10/519,955                      | Filed<br>December 30, 2004 |
|   |                          | First Named Inventor<br>Kasper Kokkonen               |                            |
| on _____  | Art Unit<br>1793         | Examiner<br>Jie Yang                                  |                            |
| Signature _____   | Confirmation No.<br>7370 |   |                            |
| Type or printed name _____  |                          |   |                            |

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the



applicant/inventor.

*Brandon T. Schurter*

Signature



assignee of record of the entire interest.  
See 37 CFR 3.71. Statement under 37 CFR  
3.73(b) is enclosed. (Form PTO/SB/96)

Brandon T. Schurter

Type or printed name



attorney or agent of record.  
Registration number \_\_\_\_\_

212-415-8600

Telephone number



attorney or agent acting under 37 CFR 1.34.  
Registration number if acting under 37 CFR 1.34  
59,668

August 25, 2009

Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below\*.



\*Total of 1 forms are submitted.

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

## PRIVACY ACT STATEMENT

The Privacy Act of 1974 (P.L. 93-579) requires that you be given certain information in connection with your submission of the attached form related to a patent application or patent. Accordingly, pursuant to the requirements of the Act, please be advised that: (1) the general authority for the collection of this information is 35 U.S.C. 2(b)(2); (2) furnishing of the information solicited is voluntary; and (3) the principal purpose for which the information is used by the U.S. Patent and Trademark Office is to process and/or examine your submission related to a patent application or patent. If you do not furnish the requested information, the U.S. Patent and Trademark Office may not be able to process and/or examine your submission, which may result in termination of proceedings or abandonment of the application or expiration of the patent.

The information provided by you in this form will be subject to the following routine uses:

1. The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C. 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether disclosure of these records is required by the Freedom of Information Act.
2. A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.
3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.
4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).
5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.
6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).
7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (i.e., GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.
8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspection or an issued patent.
9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Serial No.: 10/519,955 Confirmation No.: 7370  
Applicant(s): Kasper Kokkonen Group Art Unit: 1793  
Examiner: Jie Yang  
Filed: December 30, 2004  
For: METHOD AND ARRANGEMENT FOR FEEDING AN ANODE INTO A  
SMELTING REACTOR

**ARGUMENTS FOR PRE-APPEAL BRIEF CONFERENCE**

Mail Stop AF  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

In response to the Final Office Action dated April 8, 2009 and the Advisory Action dated June 22, 2009, applicants submit these arguments along with a “Notice of Appeal”, a “Request for a Pre-Appeal Brief Conference”, and a Petition for Extension of Time (two months).

**ARGUMENTS****1. Status of the Claims**

Claims 1-6 and 9-18 are currently pending after entry of the instant paper. Claims 7-8 have been cancelled and claims 14-18 have been withdrawn without prejudice.

**2. Brief History**

- 12/30/2004 – Application Filed
- 08/24/2007 – Requirement for Restriction/Election
- 09/17/2007 – Response to Requirement for Restriction/Election
- 10/04/2007 – Non-Final Office Action rejecting all claims under 35 U.S.C. § 103
- 12/27/2007 – Amendment/Request for Reconsideration after Non-Final Rejection
- 03/31/2008 – Final Rejection rejecting all claims under 35 U.S.C. § 103
- 06/10/2008 – Request for Continued Examination
- 08/07/2008 – Non-Final Office Action rejecting all claims under 35 U.S.C. § 103
- 01/07/2009 – Amendment/Request for Reconsideration after Non-Final Rejection

- 04/08/2009 – Final Rejection rejecting all claims under 35 U.S.C. § 103
- 06/04/2009 – Amendment after Final
- 06/22/2009 – Advisory Action and Amendment after Final entered

3. **Rejections under U.S.C. §103**

In the 4/8/2009 Final Office Action, claims 1-6 and 9-13 were rejected under 35 U.S.C § 103(a) as allegedly being unpatentable over US Patent No. 5,685,892 (“US’892”) and claims 7-8 were rejected under 35 U.S.C § 103(a) as allegedly being unpatentable over US’892 and further in view of US 4,457,977 (“US’977”). In response, applicants presented an amendment after final wherein claim 1 was amended to incorporate the elements of claims 7 and 8 along other claim amendments (see Amendment 6/4/2009, pages 2 and 6-7). The Examiner entered the amendments in this response for purposes of appeal (Advisory Action 6/22/2009, Item 7).

In the 6/22/2009 Advisory Action, the Examiner rejected all the pending claims under U.S.C § 103(a) as allegedly being unpatentable over US’892 in view of US’977. Applicants respectfully disagree because: (A) neither US’892 nor US’977 alone or in combination teach or suggest all of the elements required by the claims (see Amendment 6/4/2009, pages 8-10); (B) the Examiner incorrectly states that “the applicant’s [sic] arguments [sic] against the references individually, one cannot show nonobviousness by attacking references individually” (Advisory Action 6/22/2009, p.2 cont. 11); (C) a combination of the references does not result in the apparatus of the instant claims.

A. Claims 1-6 and 9-18 are Patentably Distinct Over US’892 in view of US’977

The Examiner admits that “US’892 does not explicitly teach bending the anode by four rolling rollers... [or that] the diameter of the rolling roller[s] are] 100 to 500 millimeters” (Advisory Action 6/22/09, p.2, cont. of 7). However, the Examiner contends that “US’892 teaches similar bending technique to change the anode sheet shape with different bending angles

for same purpose feeding anode sheet...” (Id.). The Examiner relies on US’977 for allegedly teaching four rolling rolls that are used for performing roll bending on shape metal (Id.). The Examiner further argues that it would have been obvious to optimize the bending technique, use four rolling rollers with diameters 100 to 500 mm, and arrange the rollers above the feeding funnel to arrive at the apparatus of the instant claims (Id.). The Examiner’s arguments are similar to those made in prior Office Actions (see e.g., Office Action 4/8/2009).

Applicants respectfully disagree with the Examiner’s contentions. First, the instant claims are directed to an apparatus that feeds an “essentially completely bent anode” onto “the surface of a melt... in an essentially horizontal position” (Amendment 6/4/09, p. 8). In contrast, US’892 teaches feeding anodes into a smelting reactor by either a) dropping a bent anode into a smelting reactor in a vertical position or b) utilizing a jump rail to place an unbent anode in a horizontal position (Id.). US’977 does not remedy the deficiencies of US’892 because it is not directed to feeding anodes into a smelting reactor.

Second, the instant claims require that the rolling rollers are “configured to essentially completely bend the anode on both sides thereby providing the anode with a radius of curvature of about 1,000 – about 3,000 millimeters” (Id. p. 9). This claim element is not a result-effective variable, because it is a specific configuration and feature of the apparatus. Neither US’892 nor US’977 alone or in combination teach or suggest this claim element. Instead US’892 discloses the use of a bending press (i.e., not rollers) to create a bend angle (i.e., not a radius of curvature) between 10° to 45° to change the trajectory of the anode after it enters the smelting reactor (Id. and Response 12/27/2007, p. 5). Therefore, the Examiner’s statement in the Advisory Action that “US’892 teaches similar bending technique to change the anode sheet shape with different bending angles for same purpose feeding anode sheet...” (p.2, cont. 11) is incorrect.

US'977 does not remedy the deficiencies of US'892 because US'977 discloses rollers that completely bend shape metal ("angle bar") into rings, loops, or rolls (Amendment 6/4/2009, p. 9). The type of bending performed by US'977 is distinct from the bending recited in the instant claims which require a radius of curvature of about 1,000 to about 3,000 millimeters. Additionally, US'977 states that "[t]he four rolls 1, 2, 3 and 4 of the roll bending apparatus are generally arranged as shown in FIG. 7" (col. 4, lines 46-47). FIG. 7 shows a roller configuration that would result in a distinctly different bend type and different bend angle than that required by the instant claims. This is further evidenced in US'977 in FIG. 12.

Finally, applicants assert that neither of the cited references alone or in combination teach or suggest that "each rolling roller has a diameter ranging from 100 – 500 millimeters" as required by the instant claims. Specifically, US'892 does not teach rolling rollers and US'977 does not disclose any specific, or preferred, diameter of the rolling rollers.

Thus, neither US'892 nor US'977 alone or together teach or suggest every claim element.

**B. The Examiner Incorrectly States That Applicants Argued The References Individually**

In the 6/22/2009 Advisory Action, the Examiner states that the applicants only argued the references individually (p.2, cont. of 11). Applicants respectfully disagree and point to the 6/4/2009 Amendment where arguments were presented for the references in combination: page 8, lines 11-12 and 21-22; page 9, lines 1-2, 9-11, and 18; page 10, lines 13-14, 16-17, 19-22.

**C. A Combination Of The References Does Not Result In The Instant Claims**

Applicants assert that there is insufficient motivation to combine US'892 with US'977 and that a combination of the references would not produce the apparatus of the instant claims. First, US'892 does not disclose essentially completely bending the anode with any radius of curvature. Instead, US'892 uses a bending press (i.e., not rollers) to bend one end of the anode

to create a bend angle (i.e., not a radius of curvature). Additionally, the purpose of the bend in US'892 is to perturb the fall trajectory after the anode reaches the surface of the melt. This is distinct from the instant claims which require an essentially bent anode to reach the surface of the melt in an essentially horizontal position.

US'977 does not remedy the deficiencies of US'892 because the rollers in US'977 are configured in an orientation different than the instant invention (compare US'977 FIG. 7 with present application Fig.1). The configuration of the rollers in US'977 would produce a different curve type and a different radius of curvature than those required by the instant claims. Also, US'977 is generally directed to completely roll bending shape metal ("angle bars") into rings or loops, whereas the instant apparatus essentially completely bends an anode with a radius of curvature of about 1,000 to 3,000 mm. Thus, combining US'977 with US'892 would not produce the apparatus of the instant claims.

Moreover, to create the type of bend with a radius of curvature required by the instant claims on an anode, a person would have to modify US'977 in a manner that would destroy its intended function. This is improper based on MPEP § 2143.01(V) (Amendment 6/4/09, p. 10).

Therefore, a combination of US'892 with US'977 would not result in the instant claims.

#### **4. Conclusion**

Therefore, claim 1 is not obvious over US'892 in view of US'977. Reconsideration and withdrawal of the rejections to claims 1-6 and 9-13 under 35 U.S.C. §103(a) is respectfully requested. Applicants have not individually addressed rejection of the dependent claims 2-6 and 9-13, because applicants submit that independent claim 1 from which they directly or indirectly depend is in condition for allowance as set forth above.

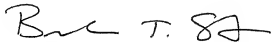
**AUTHORIZATION**

The Commissioner is hereby authorized to charge any additional fees which may be required for consideration of this Amendment to Deposit Account No. **504827**, Order No. 1004350.119US.

In the event that an extension of time is required, or which may be required in addition to that requested in a petition for an extension of time, the Commissioner is requested to grant a petition for that extension of time which is required to make this response timely and is hereby authorized to charge any fee for such an extension of time or credit any overpayment for an extension of time to Deposit Account No. **504827**, Order No. 1004350.119US.

Respectfully submitted,  
LOCKE LORD BISSELL & LIDDELL LLP

By:



Dated: August 25, 2009

Brandon T. Schurter  
Registration No. 59,668

Correspondence Address:

Address Associated With Customer Number:  
85775

(212) 415-8600 Telephone  
(212) 303-2754 Facsimile